LEE CHEE POH (MENDAKWA ATAS DIRI SENDIRI DAN UNTUK PIHAK PERTUBUHAN PERAIH-PERAIH DAGING WILAYAH PERSEKUTUAN DAN SELANGOR)

v.

FARMERS AND BUTCHERS ABATTOIR MANAGEMENT SDN. BHD. & 2 ORS.

HIGH COURT MALAYA, SHAH ALAM
DATO' K.C. VOHRAH J
[CIVIL CASE NO. 22-485-1992]
16 MARCH 1995

ADMINISTRATIVE LAW: *Collection and retention of fees pursuant to s. 19 Abattoirs (Privatisation) Act 1993 (Act 507) - Fees prescribed by Lembaga Kemajuan Perusahaan Haiwan Negara (Control of Slaughter) Rules 1975 P.U.(A) 220 - Government of Malaysia consenting to the collection and retention of fees not prescribed under Part II Schedule II to P.U.(A) 220 - Whether collection and retention of such fees justified.*

The 1st defendant took management of the Central Abattoir Shah Alam from the Government of Malaysia, the 3rd defendant, on 1 January 1990 who in turn allowed the 1st defendant to collect, per head, a slaughter fee prescribed under Part II of Schedule II of Lembaga Kemajuan Perusahaan Haiwan Negara (Control of Slaughter) Rules 1975 P.U. (A) 220 for the slaughter of pigs from the plaintiffs. The collection and retention of such fees was validated pursuant to the passing of the Abattoirs (Privatisation) Act 1993 (Act 507), which came into effect on 15 December 1993. Section 19 of Act 507 provides that any fees collected and retained by any person in respect of the operation of an abattoir pursuant to an agreement entered into before the date of commencement of the Act between the Government of Malaysia and such person is validated and deemed lawfully collected.

The plaintiff applied to the Court for a declaration that the collection of a fee for washing of the stomach and intestine of a pig prescribed under the Abattoir (Fees) Rules 1994 made on 9 April 1994 under Act 507 is unjustified in law on the basis that the collection of such fee was not originally prescribed under Part II of Schedule II to P.U.(A) 220. The defendants argued that the collection and retention by the 1st defendant of all the fees allowed by the 3rd defendant and which arose from the agreement made between the 3rd defendant and the 1st defendant was justified in law by virtue of s. 19 of Act 507.

Held:

In s. 19 of Act 507 the word “fees” is used and that has to be understood in the context as fees charged under P.U.(A) 220. What is validated under s. 19 of Act 507 is “fees” collected and retained in respect of the operation of an abattoir by a party other than the Government of Malaysia. Under P.U.(A) 220 only fees contained therein could be collected by the Government and no more. Since the Government could not by itself collect fees beyond that prescribed in P.U.(A) 220, it could not authorise others to do so. The collection and retention of a charge for washing the stomach and intestine of pigs was not a collection for a fee under P.U.(A) 220 and is not sanctioned by s. 19 of Act 507.

[Plantiff’s application granted].

Legislation referred to:
Abattoirs (Privatisation) Act 1993, s. 19
Lembaga Kemajuan Perusahaan Haiwan Negara (Control of Slaughter) Rules 1975 P.U.(A) 220, ss. 2 & 4, rr. 5(1) & 5(2), Part II, Schedule II.
Lembaga Kemajuan Perusahaan Negara Act 1972 (Act 73), s. 23
The Lembaga Kemajuan Ternakan Negara (Dissolution Act 1983), ss. 3 & 49

Other source referred to:
Interpretation of Statutes, Maxwell, 12 Edn., p. 216

JUDGMENT

K.C. Vohrah J:

Declaration that collection of certain fees not justified in law

The application by the plaintiff was for the Court to declare that the collection of one item of fees by the 1st defendant, which the Government of Malaysia, the 3rd defendant allowed was not justified in law. There were prayers for consequential orders relating to the taking of account of the relevant fees received by the 1st defendant and payment of the same to the plaintiff.

Validation of fees collected and retained

There were several items of fees collected by the 1st defendant with the consent of the 3rd defendant in regard to services rendered by the 1st defendant when the 1st defendant managed an abattoir. The collection and retention of such fees was clearly not sanctioned by law and thus the passing of the Abattoirs (Privatisation) Act 1993 (Act 507), which came into effect on 15 December 1993. The argument by the defendants was that the collection and retention by the 1st defendant of all the fees allowed by the 3rd defendant was justified in law since s. 19 of Act 507 provides:

> Any fees collected and retained by any person in respect of the operation of any abattoir pursuant to any agreement, lease or tenancy entered into before the date of commencement of this Act between the Government of Malaysia and such person is hereby validated and deemed to have been lawfully collected and retained by such person.

Whether fee for washing of stomach and intestine covered by statutory validation

The plaintiff, however, contended that s. 19 does not validate one fee which was imposed by the 3rd defendant and collected by the 1st defendant, i.e. the fee of RM1.50 for the washing of the stomach and intestine of a pig as the fee was not in the first place prescribed by the Lembaga Kemajuan Perusahaan Haiwan Negara (Control of Slaughter) Rules 1975 P.U. (A) 220 unlike the other fees.

The plaintiff sues on behalf of himself and a registered society, the Pertubuhan Peraih-Peraih Daging Wilayah Persekutuan and Selangor. He and members of the society are "operators" within the meaning of ss. 2 & 4 of P.U. (A) 220.

Fees prescribed under P.U. (A) 220

Under r. 5(1) of P.U. (A) 220, for "every livestock slaughtered, an operator shall pay the fee specified in Part II of Schedule II" thereto and under r. 5(2) livestock brought for slaughter at an approved slaughter may on payment of the fees specified in Part II of Schedule II then be kept at the holding yard or lairage of the abattoir before its slaughter.

P.U. (A) 220 was made under the enabling powers of s. 23 of the Lembaga Kemajuan Perusahaan Negara Act 1972 (Act 73) and to be noted is that the word used in r. 5 for any charge for services rendered under Part II of the schedule to P.U. (A) 220 is "fee".

Government slipping into shoes of Lembaga

The Lembaga, the Lembaga Kemajuan Ternakan Negara, which was established by Act 73, was dissolved by s. 3 of The Lembaga Kemajuan Ternakan Negara (Dissolution Act 1983) and all powers, rights, privileges, duties, liabilities and obligations devolved on the Government of Malaysia under s. 49 of the said Act provides for subsidiary legislation affecting or for the protection of the Lembaga and in force immediately before the commencement of Act 292 to continue in force until amended or revoked and references therein to the Lembaga shall be constituted as references to the Government.

The 1st defendant is the leaseholder of the Central Abattoir Shah Alam from the Government of Malaysia, the 3rd defendant, and the 1st defendant took management of the said abattoir on 1 January 1990.

Fee for cleaning of stomach and intestine not prescribed under P.U. (A) 220

The 3rd defendant through its servant, the Director of Veterinary, allowed the 1st defendant to collect, per head, a slaughter fee prescribed under Part II of Schedule II to P.U. (A) 220 for the slaughter of pigs. The plaintiff has conceded that the collection of this fee was properly made. I shall comment on this later.

The 1st defendant was also allowed to collect fees for the washing of the stomach and intestine of pigs. It has to be noticed that there is no fee prescribed for this item of service under Schedule II of P.U. (A) 220. It was argued that since it is not a prescribed fee the 3rd defendant could not have given to anybody any consent to collect such fee as the fee was non existent in the rules.

As for the slaughter fee which was also allowed to be collected, with the passing of Act 507 and by virtue of s. 19 thereof (see the provision set out earlier) that fee that was collected and retained by the 1st defendant pursuant to an agreement (15 December 1993) between the Government of Malaysia and the 1st defendant was validated and the plaintiff, as stated earlier had conceded that at the hearing.

To come back to the fee for the washing of the stomach and intestine, an interesting development has to be noted. Under the Abattoir (Fees) Rules 1994 made on 9 April 1994 under Act 507 (about 10 days before the hearing of this application) the fee for the service of washing of small intestine and stomach of a pig or sow is RM1.50 per set under Part II of the Schedule. But these 1994 Rules were deemed to have come into force on 15 December 1993, the date of the commencement of Act 507.

The point that arises is this - was the fee of RM1.50 collected and retained by the 1st defendant for the washing of the stomach and small intestine of a pig before 15 December 1993 from the plaintiff validated?

Counsel for the 3rd defendant argued that the fee of the collection and retention of the amount of RM1.50 collected and retained for the washing of the guts of a pig arose from an agreement made on 16 March 1990 between the 3rd defendant and the 1st defendant and therefore came within the provision of s. 19 of Act.

I disagree. In s. 19 of Act 507 the word "fees" is used and that has to be understood in the context only of the fees charged under P.U. (A) 220 bearing in mind that retrospective legislation is not be construed so as to have a greater retrospective operation than its language renders it necessary (see Maxwell: *Interpretation of Statutes*, 12 Edn., p. 216).

What has to be understood is that what is validated under s. 19 of Act 507 is "fees" collected and retained in respect of the operation of an abattoir by a party other than the Government of Malaysia. What fees could the Government have collected in the first place at the relevant time for the operation of the abattoir? Under P.U. (A) 220/7, which continued in force even when the Government slipped into the shoes of the Lembaga through the Act dissolving the Lembaga, only the fees contained therein could be collected and no more. These were the fees that should have been collected and retained by the Board originally and only the Government could have collected and retained them when it slipped into the shoes of the Lembaga. I do not see how it can be argued that the Government could itself collect fees beyond the fees prescribed in P.U. (A) 220/94. And therefore what it could not do it could not authorise others to do. And there is nothing in the language of s. 19 to allow the collection of charges other than "fees".

My view is that the collection and retention of a charge of RM 1.50 per set for the washing the stomach and intestines of pigs was not a collection and retention of a fee under P.U. (A) 220/94 and is not sanctioned by s. 19 of Act 507. Accordingly I held that the collection and retention of such fee from 1 March 1992 to 10 December 1993 by the 1st defendant from the plaintiff is not justified in law.